

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DONALD MARK HAYWOOD,

Plaintiff,

vs.

THOMAS F. GEARHART,

Defendant.

**COMPLAINT AND
DEMAND FOR JURY
TRIAL**

Civil Action No.:

Plaintiff, by and through his attorneys, Fitzsimmons, Nunn & Plukas, LLP, as and for his
Complaint against Defendant, alleges as follows:

PARTIES

1. Donald Mark Haywood ("Plaintiff"), is a resident of the State of Arizona, residing in Benson, Arizona.
2. Plaintiff was born in 1964.
3. Upon information and belief, Defendant, Thomas F. Gearhart ("Gearhart"), is a resident of Linden, Pennsylvania.

DEMAND FOR JURY TRIAL

4. Plaintiff hereby demands trial by jury as to all issues.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interests and costs, and because complete diversity exists between the parties, as Plaintiff is a citizen of Arizona, and the

Defendant is a citizen of Pennsylvania.

6. Venue is proper within this district pursuant to 28 U.S.C. § 1391 because it is a judicial district where the events and omissions giving rise to the claim occurred.

FACTUAL ALLEGATIONS

7. On July 4, 2016, at approximately 8:57 p.m., Plaintiff was present at 8836 York Settlement Road, Sodus, New York 14551.

8. Upon information and belief, on July 4, 2016, 8836 York Settlement Road was owned by Thomas F. Gearhart of 707 E. New Road, Linden, Pennsylvania 17744.

9. At the above time and location Plaintiff was present in a motor home that was attached to a structure in the yard at 8836 York Settlement Road, Sodus, New York.

10. While present at the location Plaintiff was severely burned as a result of a fire in the motor home owned by the Defendant.

11. The motor home was negligently maintained in such a manner that a gas leak from the converted refrigerator ignited causing the Plaintiff's severe burns.

12. Upon information and belief, the Defendant, through negligent maintenance, caused or created the condition which led to the gas leak and fire.

13. Upon information and belief, Defendant had a duty to keep the premises reasonably safe for any person whose presence is reasonably foreseeable.

14. Plaintiff, Donald Mark Haywood, was residing at the location at the time and his presence was reasonably foreseeable.

15. Defendant was also negligent in failing to use reasonable care in discovering or correcting the dangerous condition which led to the fire.

16. As a direct and proximate result of Defendant's negligent conduct Plaintiff has

been injured.

17. Plaintiff's injuries occurred wholly and solely as a result of the negligence of the Defendant with no comparative fault on the part of the Plaintiff contributing thereto.

18. As a direct and proximate result of the negligence of the Defendant Plaintiff has suffered severe injuries and scarring and has suffered serious personal injuries and has been rendered sick, sore, lame and disabled, incurred medical expenses and has suffered from significant physical injuries and will continue to suffer from all such permanent injuries.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount greater than \$75,000 exclusive of interest and costs, together with such other and further relief that this Court shall deem just and proper.

Dated: April 16, 2019



Richard A. Plukas, Esq.

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